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**83-2080**

NO. \_\_\_\_\_

Office-Supreme Court, U.S.  
FILED  
JUN 18 1984  
ALEXANDER L STEVAS,  
CLERK

IN THE SUPREME COURT OF THE  
UNITED STATES

October Term 1983

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ROBERT L. GIULIANI,

Appellant,

v.

STATE OF HAWAII; and HERMAN  
LUM, JAMES S. BURNS, WALTER N.  
HEEN, HARRY T. TANAKA,  
TOSHIMI SODETANI, YASUTAKA  
FUKUSHIMA in their capacities  
as Justice and Judges in the  
Courts of the State of Hawaii,

Appellees.

---

APPELLANT FOR PETITION - CIVIL CASE  
ON WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE NINTH CIRCUIT

---

PETITION FOR WRIT OF CERTIORARI

---

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USP



QUESTIONS PRESENTED FOR REVIEW

- A. WHETHER THE APPEAL COURT'S SANCTIONING OF THE FINDING OF THE DISTRICT COURT TO ALLOW THE INTENTIONAL DEPRIVATION OF THE APPELLANT'S FEDERAL RIGHTS AND PRIVILEGES BY THE APPELLEES JUSTIFIES THE U.S. SUPREME COURT'S POWER OF SUPERVISION.
- B. WHETHER THE OPINION UNDER PETITION CONFLICTS WITH APPLICABLE DECISIONS OF THE U.S. SUPREME COURT OR A FEDERAL COURT OF APPEALS.

LIST OF PARTIES AFFECTED

The caption of this case in this Court contains the names of all the parties to the proceeding in the Court whose judgment is sought to be reviewed.

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\*Only pertinent parts copied into  
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unnecessarily encumbering this  
petition.

NO.

IN THE SUPREME COURT OF THE  
UNITED STATES

October Term 1983

---

ROBERT L. GIULIANI,

Appellant,

v.

STATE OF HAWAII et.al.,

Appellees.

---

ON WRIT OF CERTIORARI TO  
NINTH CIRCUIT COURT OF APPEALS

---

To the Honorable Chief Justice and  
Associate Justices of the Supreme Court of  
the United States:

Your Petitioner, ROBERT L. GIULIANI,  
respectfully prays that a petition be  
granted to review the Memorandum Opinion of  
the Ninth Circuit Court of Appeals in the  
above entitled case.

REFERENCE TO OPINIONS BELOW

The Ninth Circuit Court of Appeals  
Memorandum Opinion, sought to be reviewed,

was entered on 23 Feb 1984, (A.A). The appeal Court's Order Denying Petition for Rehearing was entered on 26 Mar 1984, (A.B).

The Order Granting Motion to Dismiss by the U.S. District Court for District of Hawaii was filed on 15 Jun 1983, (A.C). The Judgment in a Civil Case was filed by the District Court on 15 Jun 1983 using a form document (Civ 31 Rev 7/82) which is copied unformatted, in pertinent part only (A.D), to conform to the page size requirement of this Petition for Writ of Certiorari

#### STATEMENT OF JURISDICTIONAL GROUNDS

The date and entry of the memorandum opinion sought to reviewed (A.A) is 23 Feb 1984. The date of denial of the petition for rehearing was 26 Mar 1984. There are no

##### Notes:

1. Text references to appendices hereto are abbreviated to two letters enclosed by parenthesis, i.e. (A.B) refers to appendix B.
2. Collective references in the text to the Appellee Justice and Judges are as "Appellee Judges".
3. Text references to lower court records are abbreviated (CR).

orders granting an extension or time to petition for Writ of Certiorari. The statutory provisions to confer jurisdiction to review the opinion by Writ of Certiorari are 28 USC Secs 1254(1), 2072, 2101(c), 2106.

CONSTITUTIONAL PROVISIONS  
STATUTES, REGULATIONS

A. United States Constitution (A.G)

Amend VII

Amend IX

Amend XI

Amend XIV

B. United States Statutes (A.G)

28 USC 1331

28 USC 2072

28 USC 2101(c)

28 USC 2106

42 USC 1983

C. Federal Rules of Civil Procedure (FRCP) (A.G)

Rule 56(c)

D. Hawaii State Constitution (A.K)

Art I-Sec 8. Rights of Citizens

Art I-Sec 13. Trial by jury, civil cases

Art I-Sec 21. Limitations of special  
privileges

Art I-Sec 22. Construction

Art VI-Sec 7. Rules

E. Hawaii Rules of Civil Procedure (HRCP) (A.L)

Rule 16. Pretrial procedure; Formulating  
Case

Rule 56(c). Summary Judgment

Rule 60. Relief from judgment or order

Rule 61. Harmless error

F. Hawaii Revised Statutes (HRS) (A.N)

\*HRS Chapt 602. Supreme Court

\*HRS Chapt 603. Circuit Courts

HRS Sec 635-12. No Jury, When

HRS Sec 625-13. Jury, When of Right.

\*Copied in pertinent part only to avoid unduly  
encumbering this petition.

STATEMENT OF THE CASE

TRANSAMERICA FREIGHT LINES v BRADA

MILLER FREIGHT SYSTEMS established that order not to publish appeal court's opinion, (A.A) is no bar to U.S. Supreme Court's review.

The statutory basis for federal jurisdiction is 28 USC 1331 and 42 USC 1983.

The lower federal courts have denied the Appellant's demand for jury trial in the instant case. This is a petition from summary proceedings.

The Appellee Judges acted as Justice and Judges in the Courts of the Appellee State of Hawaii during all times relevant to the complaint in this case. As such, they were known to be responsible officials of the Appellee State. The Appellant, GIULIANI, complains that the Appellee Judges did repeatedly, intentionally misuse and abuse the power of their courts to strip GIULIANI of his federal rights and privileges while GIULIANI was a pro se plaintiff in a civil suit before them. That suit will be referred to

herein as the CHUCK case.

To understand the instant case, the Appellee Judges' conduct of the CHUCK case, which causes the instant case, needs to be understood.

In the CHUCK case, the Appellant GIULIANI, accused a local Hawaii lawyer, CHUCK, of intentionally, materially changing the terms of a real estate contract to which GIULIANI was a party without GIULIANI's knowledge. When GIULIANI, thereafter, acted to legally rescind the contract pursuant to the contract's terms, CHUCK - the Hawaii lawyer - countered by interfering with the legal rescission and prevented the legal return of GIULIANI's deposit money. This forced GIULIANI to sue the party seller in the contract for return of the deposit and CHUCK defended the seller. The Hawaii lawyer, CHUCK, interfered with - and broke - the contract; caused the suit; and delayed the suit into unnecessarily long litigation. CHUCK has

never denied these allegations or the facts that were entered in the CHUCK case to prove the allegations.

GIULIANI sued CHUCK in the CHUCK case as a pro se plaintiff. CHUCK defense before the Appellee Judges was that CHUCK, as a lawyer with a client had "lawful privilege" and "lawful immunity" to "lawfully" commit the very acts for his client that were known to have been unlawful for his client to have personally committed.

GIULIANI demanded jury trial in that suit. After more than five years of argument in summary proceedings, the Hawaii Court found that GIULIANI had established his right to a jury trial. Certified court transcripts will prove that all parties agreed to the trial. Certified copies of docket sheets in the record of the instant case prove that the Hawaii Court made the Order granting the jury trial. The court's Order granting the jury trial was lawful and correct in every respect.

It has never been challenged or even  
questioned at any time by any of the parties  
or the courts.

When the court lawfully ordered the jury trial in the CHUCK case, GIULIANI's Federal Constitution, Amend VII right to jury trial was established and protected.

The court ordered jury trial in the CHUCK case never took place because the Appellee Judges prevented the jury trial AFTER THE COURT FOUND REASON TO ORDER THE JURY TRIAL without ever questioning the validity of the court's order for the jury trial.

The CHUCK case proceeded to a pre-trial conference before the intended jury trial judge, Appellee FUKUSHIMA, after the jury trial Order. A newly assigned defense lawyer, VENTURA, appeared in the case. The pretrial conference was attended by Judge FUKUSHIMA, GIULIANI and the newly assigned defense lawyer, VENTURA. VENTURA quickly suggested to FUKUSHIMA to revert the case back to the summary court where it had been

argued for more than five years. Over GIULIANI's objections but without argument, FUKUSHIMA refused to conduct the court ordered jury trial and sent the case back to the summary court at the behest of the new lawyer. The new lawyer, VENTURA, only needed to suggest and the court did his bidding without any new evidence to do so or even questioning the validity of the court's Order for jury trial.

The CHUCK case found itself in Appellee SODETANI's summary court where he dismissed the case in favor of the new defense lawyer and CHUCK.

GIULIANI requested rehearing in SODETANI's court. Certified copies of the court's transcripts will prove that SODETANI interrupted GIULIANI's oral argument after 15 minutes saying that he had heard enough and that 15 minutes was long enough for GIULIANI to present his case. SODETANI then denied the rehearing by way of a "minute

order".

GIULIANI's appeal to the Hawaii Appeal Court was dismissed for lack of jurisdiction, (A.H). GIULIANI requested rehearing from the Hawaii Intermediate Appeal Court consisting of Appellees BURNS, HEEN and TANAKA, wherein GIULIANI specially pointed out his right to jury trial under the seventh amendment by quoting it in the request. The request for rehearing was denied by BURNS, HEEN and TANAKA.

GIULIANI petitioned the Hawaii Supreme Court for writ of certiorari which was denied, (A.J) by Appellee Justice LUM notwithstanding that LUM had the entire lower court's record of the CHUCK case available to him.

In the instant case, the Appellant accuses the Appellee Judges of clearly overstepping their jurisdiction in the CHUCK case. The statement of facts set forth above were known to the lower courts. The lower

courts in the instant case refuse to address the facts and issues, (A.A), (A.B), (A.C). In particular, the Opinion under petition appears to simply gloss over the entire matter in the instant case with a perfunctory appearing statement, "Essentially, appellant objects to the granting of summary judgment against him in a court proceeding.", (A.A).

#### ARGUMENT

- A. THE APPEAL COURT'S SANCTIONING OF THE FINDING OF THE DISTRICT COURT TO ALLOW THE INTENTIONAL DEPRIVATION OF THE APPELLANT'S FEDERAL RIGHTS AND PRIVILEGES BY THE APPELLEES JUSTIFIES THE U.S. SUPREME COURT'S POWER OF SUPERVISION.

The instant case is of profound importance. It addresses the latitude that the courts take, in concert with a few privileged lawyers, to use summary procedures to defeat equity and justice and virtually relegate the court to a power broker. This case will show, through facts and circumstances, that the Appellee Judges used the summary procedures in the State's courts as a means to deny GIULIANI his most fundamental federal

rights and privileges and, the State's right and privileges stemming from the federal, when it was their solemn duty to safeguard those very rights and privileges. The instant case will show how certain lawyers, blessed by the courts with "lawful privilege" and "lawful immunity", actually dominate the courts through summary procedures to defeat equity and justice by diverting cases that merit a jury's consideration away from the jury and into a one judge summary judgment in their favor. The instant case will reveal how a court knowingly degenerates from a trusted institution for rendering equitable and judicious decisions to a misused power broker answerable to nobody but themselves. It will reveal that the State Court's disciplinary counsel, ostensibly established to curb lawyer abuses, actually extend and consolidate the favored lawyers' privileges to commit abuses.

All aspects of precedence for this

case can be found in the combination of citations to the lower courts: Ex Parte VIRGINIA; MITCHUM v FOSTER; GREGORY v THOMPSON; and THOMPSON v SHAPIRO. This case has additional foundation in 42 USC 1983. There is an imperative need for the U.S. Supreme Court to again exercise its jurisdiction to protect the U.S. Citizen's federal rights and privileges in the courts.

The record in the instant case shows that the CHUCK case was lawfully and correctly ordered into the jurisdiction of the jury by the Hawaii Court after more than five years of argument on the matter before the courts. The Hawaii Court found that the right to jury trial was established before granting the Order. No party or court has ever questioned the court's finding that sent the case to the jury. In fact, the Appellant will prove from copies of the Hawaii Court's transcripts that all parties agreed to jury trial whereupon the court made the Order. At this point in

the CHUCK case, GIULIANI's right to jury trial was concretely established and it was protected by the U.S. Constitution, Amend VII and Hawaii Constitution, Art I-Sec 13.

The Appellant will prove that at no time was there any new evidence in the CHUCK case that might shed doubt on the validity of the Court's Order for the jury trial. The Appellant claims that the CHUCK case has never been lawfully settled and that GIULIANI still has the Constitutionally protected right to jury trial in the CHUCK case.

As mentioned, a pretrial conference was held in the CHUCK case. Appellee FUKUSHIMA failed to make the record of the conference required by HRCP Rule 16, (A.L). The case reverted to SODETANI's summary court.

In view of the Constitutionally established right to jury trial, SODETANI's court was only entitled to order the case back to a jury trial or, possibly, award

judgment to GIULIANI. Instead, SODETANI disregarded the constitutional status of the case and dismissed it in favor of the new defense lawyer in the clear absence of all jurisdiction. This left GIULIANI with no recourse at all for the case was still constitutionally in the jurisdiction of the jury and it remains there to this time. It will continue to remain so, under the direct protection of the federal constitution, until the case is lawfully settled. The Appellee judges do not have the lawful power to overrule the Constitution. The lower courts, in so protecting the Appellees with the summary procedure, are showing the same disregard for the Constitution.

Appellant wishes to make very clear that his insistence for his federal right to jury trial is not merely academic in the CHUCK case. From the very beginning of the CHUCK case, the Hawaii Courts demonstrated their partiality and willingness to extend

the lawyers' privileges and immunities so far beyond any reasonable bounds, in the face of overwhelming facts to the contrary, that a jury was needed for an impartial finding. The courts had demonstrated that they were incapable of being impartial in the CHUCK case.

The Appellee Judges knew that the court had ordered the jury trial and still they prevented the jury trial and dismissed the case by using summary proceedings with no new evidence.

When GIULIANI finally appealed the CHUCK decision to the Hawaii Appeal Court, the Appeal Court was only entitled to remand the case back to the jury or, possibly, award GIULIANI judgment. In dismissing the case, (A.H) and denying writ of certiorari, (A.J) the Hawaii Courts simultaneously recognized virtually unlimited extension of the "lawful privilege" of the lawyer with a client to injure any other person and extended the

court's power above the constitution to do it. In the words of the GREGORY v THOMPSON decision, which the district court specifically relies on for its finding that the appeal court affirms, The Appellee Judges acted, "in the clear absence of all jurisdiction".

The Appellee Judges rely on Hawaii's enumerated laws, HRS 602 and 603, (A.N) to vest in them the power to deprive GIULIANI of his constitutional rights. Hawaii's Constitution prohibits construing of enumerated rights and privileges to impair or deny other rights and privileges retained by the people. Hawaii Const. Art I-Sec 21, (A.K) absolutely restricts the State's power to act only "in the general welfare". In the instant case, Hawaii's defense is opposite to its Constitutional restriction on the use of its power to act in the "general welfare".

**B. THE OPINION UNDER PETITION CONFLICTS WITH APPLICABLE DECISIONS OF THE U.S. SUPREME COURT OR A FEDERAL COURT OF APPEALS.**

The memorandum opinion of the Ninth Appeal affirms the Appellee State's actions

to dispel GIULIANI's federal rights by simply disregarding the substance of the instant case. By pretending that the substance does not exist, the Ninth Appeal effectively acts as a determiner of fact, (A.A) in these summary proceedings when the record does not have all the facts to make such a determination. The Appeal Court is using summary proceedings to affirm the lower court's judgment, (A.C) that conflicts with U.S. Supreme Court's rulings.

A reasonable interpretation of Hawaii's Constitution, Art I-Secs 21,22, in the instant case would be that Hawaii acts in the general welfare by revoking its immunities and privileges and standing liable for the acts of its judicial officials who claim authority under the State's statute to over rule the Federal Constitution. MITCHUM v FOSTER ruling is applicable, particularly the words, page 240, thereof to reach that decision:

"It is clear from legislative debates surrounding the passage of § 1983's predecessor that the Act was intended to enforce the provi-

sions of the Fourteenth Amendment "against State action,...whether that action be executive, legislative or judicial.\*\*\* (emphasis not added)

This point came out in SHAPIRO v THOMPSON where money damages against the State's executive branch were awarded the plaintiff for the state's infringement of the plaintiff's 14th amend rights by using the state's statute under color of law.

The Ninth Appeals in the instant case affirms the lower court's ruling that the Appellee Judges have "absolute" immunity and privileges for their acts in their courts. This reasoning denies the demanded jury trial in the instant case. In GREGORY v THOMPSON, the Ninth Appeal Court affirmed that the justice of the peace had only "qualified" immunity for his acts in his court which was bounded by his acts that were "in the clear absence of all jurisdiction". That Ninth Appeals Court's decision affirmed a jury's decision in a lower court. The lower courts in the instant case specifically rely upon

the GREGORY v THOMPSON decision, (A.C.). The reliance admits that the same matters were covered in the GREGORY case as in the instant case. The GREGORY, SHAPIRO and MITCHUM rulings are in accord with each other and with the Supreme Court's ruling in Ex Parte VIRGINIA made over one hundred years ago. All these rulings are in agreement with 42 USC 1983. The Opinions in the instant case conflict.

The Opinions, which immunize Hawaii under the eleventh amendment for depriving GIULIANI of his federal constitutional rights, also conflict with the U.S. Constitution, Amend IX, which reads:

"The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

Hawaii Constitution, Art I-Sec 22, (A.K) is a reflection of the Fed. Const., Amend IX.

The Fed Const, Amend XI only immunizes the states against the extension of the U.S. "Judicial" power over the states. Amend

XI does not immunize the states against the federal judiciary's constitutional application of Constitutional power, given under Amend IX, to prevent the state's judiciary from denying U.S. Citizens their rights "retained by the people". This is the gist of this case.

The words, "Judicial" power, that are inserted into the eleventh amend. were obviously carefully chosen to limit the intent of the eleventh to protecting the states from federal harrassment (unconstitutional interference) through the extension of federal "Judicial power" only.

The ninth amendment limits the state's rights in this case from denying or disparaging GIULIANI's individual federal rights. The fourteenth amend. and 42 USC 1983 give the federal judiciary power to enforce the ninth amend. limitations upon the state to protect GIULIANI's individual rights. The lower court's summary opinion under petition conflicts with the U.S. Constitution as well as applicable

rulings.

The instant case and the related CHUCK case show how some courts imperiously abuse and misuse their summary discretion to defeat equity and justice. This has led, at least partly, to the abuse that some lawyers make of their so-called "lawful" immunities and privileges which the CHUCK case so glaringly details.

There is a compelling need for the U.S Supreme Court to again exercise its jurisdiction to restore the U.S. Citizen's rights in the courts. The courts must be reminded that they do not stand imperiously united above the law to deprive a litigant of his federal rights through summary procedures, under color of law.

#### CONCLUSION

The Appellees have no power, privileges or immunities that can be used to deny the individual his federal rights and privileges. Within his federal rights and privileges, the U.S. Citizen is untouchable by every branch of government.

Courts are using summary procedures under color of law in which judges or panels of judges - sometimes in positions of conflict of interest - discard constitutional and legislated law, at their convenience, by merely declaring that what factually happened did not happen; CASE DISMISSED.

The scope of the privileges and immunities given in the opinion under petition is the first step to tyranny. The second step is to use those privileges to decree "lawful" privileges and immunities upon favorites such as certain lawyers. The final step is to cover up the lawyers' abuses with more favorites such as the disciplinary counsels who deliberate in secret to arrive at "findings".

The CHUCK case has never been lawfully settled leaving GIULIANI with a constitutionally protected right to jury trial in that case.

The decisions under petition void the Ninth Amend., U.S. Constitution, by construing certain enumerated State's rights - eleventh

amendment - to deny others - seventh, fourteenth amendments and 42 USC 1983 - retained by the people.

The lower courts in the instant case have shown that they require firm supervision in their application of summary proceedings.

DATED: 7 June 1984.

  
ROBERT L. GIULIANI

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UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

ROBERT L. GIULIANI, ) No. 83-2132  
vs. )  
Plaintiff-Appellant, ) Hawaii Civil  
vs. ) No. 83-0289  
vs. )  
STATE OF HAWAII; and HERMAN )  
LUM, JAMES S. BURNS, WALTER )  
H. HEEN, HARRY T. TANAKA, ) FILED  
TOSHIMI SODETANI, YASUTAKA ) FEB 23 1984  
FUKUSHIMA, in their ) PHILLIP B. WINBERRY  
capacities as justice and ) CLERK, U.S. COURT  
judges in the Courts of the ) OF APPEALS  
STATE OF HAWAII, )  
vs. )  
Defendants-Appellees. )

Appeal from the United States District Court  
for the District of Hawaii (Honolulu)  
Hon. Harold M. Fong, District Judge, Presiding

Submitted January 30, 1984\*\*

Before: TANG, SKOPIL, and REINHARDT, Circuit  
Judges.

Appellant brought a suit for damages

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\* The panel has concluded that the issues presented by this appeal do not meet the standards set by Rule 21 of the Rules of the Rules of this for disposition by written opinion. Accordingly, it is ordered that disposition be by memorandum, forgoing publication in the Federal Reporter, and that this memorandum may not be cited to or by the courts of this circuit.

\*\* The panel is unanimously of the opinion that oral argument is not required in this case. Fed. R. App. P. 34(a).

against state court judges and the State of Hawaii in the United States District Court alleging that he had been deprived of his right to a jury trial and denied due process and equal protection of the laws. Essentially, appellant objects to the granting of summary judgment against him in a state court proceeding. The district court dismissed the action pursuant to Fed.R.Civ.P. 12(b)(6). We affirm.

The state court judges have absolute immunity from liability for their judicial acts. See Stump v. Sparkman, 435 U.S. 349 (1978). An erroneous granting of summary judgment or the affirming of such an order would clearly be subject to this rule. The State of Hawaii, like all other states, is immune from suit under the eleventh amendment. See Alabama v. Pugh, 438 U.S. 781 (1978). A waiver of the eleventh amendment must be plain and clear. See Edelman v. Jordan, 415 U.S. 651, 673 (1974) State of Montana v. Peretti, 661 F.2d 756, 758 (9th Cir. 1981). No such waiver has been shown here.

The judgment of dismissal is AFFIRMED.

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

ROBERT L. GIULIANI,	)	
Plaintiff-Appellant,	)	NO. 83-2132
vs.	)	(HAWAII)
STATE OF HAWAII; and HERMAN	)	ORDER
LUM, JAMES S. BURNS, WALTER	)	
N. HEEN, HARRY T. TANAKA,	)	
TOSHIMI SODETANI, YASUTAKA	)	FILED
FUKUSHIMA, in their capacities	)	MAR 26 1984
as justice and judges in the	)	
Courts of the State of Hawaii,	)	PHILLIP B.
Defendants-Appellees.	)	WINBERRY
	)	CLERK, U.S.
	)	COURT OF APPEALS

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Before: TANG, SKOPIL, and REINHARDT, Circuit  
Judges

The petition for rehearing is denied.

LODGED

TANY S. HONG 821      MAY 20 1983

Attorney General  
State of Hawaii      CLERK, U.S.  
DISTRICT COURT

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**Attorneys for Defendants**

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

ROBERT L. GIULIANI,	) CIVIL NO. 83-0289
Plaintiff,	) ORDER GRANTING
vs.	) MOTION TO
	) DISMISS
STATE OF HAWAII; and HERMAN	) FILED IN THE
LUM, JAMES S. BURNS, WALTER N.)	UNITED STATES
HEEN, HARRY T. TANAKA,	) DISTRICT COURT
TOSHIMI SODETANI, YASUTAKA	) DISTRICT OF
FUKUSHIMA in their capacities	) HAWAII
as justice and judges in the	)
Courts of the STATE OF HAWAII,)	JUN 15 1983
Defendants.	) at 1 o'clock
	and 20 min PM
	WALTER A.Y.H.
	CHINN, CLERK

**ORDER GRANTING MOTION TO DISMISS**

This matter having come on for  
hearing on May 13, 1983 before the Honorable  
Harold M. Fong, Judge of the above-entitled

Court, on Defendants' Motion to Dismiss; and

The Court having considered the record and files herein, the memoranda submitted by all parties, and the arguments of Plaintiff and Defendants' counsel; and

The Court finding that none of the allegations state a claim upon which relief can be granted since judges are absolutely immune from suit for judicial acts within or in excess of their jurisdiction even if those acts have been done maliciously or corruptly,

Gregory v Thompson, 500 F.2d 59 (9th Cir. 1974), and the State is immune from suit under the Eleventh Amendment of the United States Constitution and the doctrine of sovereign immunity, and pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure;

IT IS HEREBY ORDERED that Defendants' Motion to Dismiss be and the same is hereby GRANTED with prejudice and that judgment be entered dismissing the complaint in this

action.

/S/ Harold M. Fong  
JUDGE OF THE ABOVE ENTITLED COURT

APPROVED AS TO FORM:

ROBERT L. GIULIANI

ROBERT L. GIULIANI VS. STATE OF AHWAIII, ET.AL.,  
CIVIL NO. 83-0289, U.S.D.C., ORDER GRANTING  
MOTION TO DISMISS

CIV 31  
Rev 7/82 JUDGMENT IN A CIVIL CASE

UNITED STATES DISTRICT COURT	DISTRICT of Hawaii
CASE TITLE	DOCKET NUMBER CIVIL NO. 83-0289
ROBERT L. GIULIANI V. STATE OF HAWAII	NAME OF JUDGE OR MAGISTRATE HAROLD M. FONG

Decision by Court. This action came to or hearing before the Court with the judge named above presiding. The issues have been heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

that defendants' Motion to Dismiss be and the same is hereby GRANTED with prejudice and that judgment be entered dismissing the complaint in this action.

FILED IN THE  
UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAII

JUN 15 1983

at 1 o'clock and 30 min 1 M.  
WALTER A.Y.H. CHINN, CLERK

cc: Hong/Chiogioji;Giuliani

CLERK /S/ Walter A.Y.H. CHINN	DATE June 15, 1983
----------------------------------	-----------------------

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

ROBERT L. GIULIANI, )  
                          )  
Plaintiff,            ) CIVIL NO. 83-0289  
                          )  
vs.                    ) NOTICE OF APPEAL  
                          )  
STATE OF HAWAII, et. al., ) FILED IN THE  
                          ) UNITED STATES DISTRICT  
Defendants.            ) COURT  
                          ) DISTRICT OF HAWAII

---

JUN 27 1983  
at 8 o'clock and  
30 min A.M.  
WALTER E.Y.H. CHINN, CLERK

NOTICE OF APPEAL

Notice is hereby given that ROBERT L. GIULIANI, above-named Plaintiff, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the Judgment filed in this action on June 15, 1983.

DATED: Honolulu, Hawaii June 21, 1983

/S/ ROBERT L. GIULIANI  
ROBERT L. GIULIANI  
Attorney in Person

P.O. Box 30862  
Honolulu, Hawaii 96820  
Tel: (808) 833 4335

U.S. CONSTITUTION

Amendment VII:

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of common law.

Amendment IX:

The enumeration in the Constitution, of certain rights, shall not be construed to deny others retained by the people.

Amendment XI:

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

Amendment XIV:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United

States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

#### U.S. STATUTES

28 USC:

##### Section 1331. Federal Question

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

##### Section 2072. Rules of civil procedure

The Supreme Court shall have the power to prescribe by general rules, the forms of process, writs, pleadings, and motions, and the practice and procedure of the district courts and courts of appeals of the United States in civil actions, including admiralty and maritime cases, and appeals therein, and the practice and procedure in proceedings for the re-

view by the courts of appeals of decisions of the Tax Court of the United States and for the judicial review or enforcement of orders of administrative agencies, boards, commissions and officers.

Such rules shall not abridge, enlarge or modify any substantive right and shall preserve the right of trial by jury as at common law and as declared by the Seventh Amendment to the Constitution.

Such rules shall not take effect until they have been reported to Congress by the Chief Justice at or after the beginning of a regular session thereof but not later than the first day of May, and until the expiration of ninety days after they have been thus reported.

All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect. Nothing in this title, anything therein to the contrary notwithstanding, shall in any way limit, supersede, or repeal any such rules heretofore prescribed by the Supreme Court.

Section 2101. Supreme Court; time for appeal or certiorari; docketing; stay

(c) Any other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree. A justice of the Supreme Court, for good cause shown, may extend the time for applying for a writ of certiorari for a period not exceeding sixty days.

Section 2106. Determination

The Supreme Court or any other court of appellate jurisdiction may affirm, modify, vacate, set aside or reverse any judgment, decree, or order of a court lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate judgment, decree, or order, or require such further proceedings to be had as may be just under the circumstances.

42 USC:

Section 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any

State or Territory or the District of Columbia, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purpose of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

#### FEDERAL RULES OF CIVIL PROCEDURE

##### Rule 56. Summary Judgment

(c) Motion and Proceedings Thereon. The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to

any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to amount of damages.

NO. 8390

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE  
STATE OF HAWAII

ROBERT L. GIULIANI and ) CIVIL NO. 46750  
INGE E. GIULIANI, )  
Plaintiffs-Appellants) APPEAL FROM THE  
vs. ) ORDER GRANTING  
WALTER G. CHUCK, ) MOTION FOR SUMMARY  
Defendant-Appellee. ) JUDGMENT, FILED  
 ) APRIL 24, 1981;  
 ) ORDER DENYING MOTION  
 ) TO AMEND COMPLAINT,  
 ) FILED JULY 15, 1981  
 ) AND THE ORDER DENY-  
 ) ING MOTION FOR RE-  
 ) HEARING AND RECON-  
 ) SIDERATION OF DECI-  
 ) SION, FILED JULY  
 ) 15, 1981  
 )  
 ) FIRST CIRCUIT COURT  
 )  
 ) HONORABLE TOSHIMI  
 ) SODETANI  
 ) Judge

---

MEMORANDUM OPINION

This action was previously before this court on Plaintiffs' appeal from summary judgment below in favor of defendant. The judgment was reversed and the case remanded for further proceedings limited to the question of defendant's alleged intentional tort.

GIULIANI v CHUCK, 1 Haw App 379, 620 P.2d 733

(1980). The case is before us again on Plaintiffs' appeal from a second summary judgment. We hold this court is without appellate jurisdiction in this matter.

The judgment and notice of judgment on appeal were filed below on January 2, 1981. On March 11, 1981, defendant filed a Motion for Summary Judgment. On April 24, 1981, after hearing, the following order is entered:

ORDER GRANTING MOTION FOR SUMMARY JUDGMENT

Defendant Walter G. Chuck having filed a motion for summary judgment and this motion having come on for hearing on March 31, 1981 and the Court having reviewed the memoranda of counsel and the Court having heard the argument of counsel and the Court being otherwise fully advised in the premises,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that summary judgment be granted in favor of Walter G. Chuck and against Robert L. Giuliani and Inge E. Giuliani.

DATED: Honolulu, Hawaii, April 23, 1981.

/s/ Toshimi Sodetani  
Judge of the Above Entitled Court

On May 11, 1981, Plaintiff filed a Motion for Rehearing and Reconsideration of Decision, "pursuant to Rule 60, H.R.C.P. (Hawaii Rules of Civil Procedure) and the record on file

herein." This motion was denied by order entered on July 15, 1981, after hearing. On July 28, 1981, plaintiff filed his Notice of Appeal

Appellee challenges appellate jurisdiction for the reason that the appellant's motion for reconsideration under "Rule 60, H.R.C.P." did not terminate the time for filing a Notice of Appeal under Rule 73(a), HRCP and, therefore, appellant's notice, filed later than thirty days after judgment, was not timely. Rule 73(a), HRCP (1980, as amended). Appellant argues he "misinterpreted" Rule 73(a) and should not be penalized for that, since his notice of appeal was filed within thirty days of the denial of his motion for reconsideration. Appellant also argues that strict application of Rule 73(a) would be prejudicial to his "substantive rights," citing Hawaii Revised Statutes (HRS) 602-11 (1981 Supp).<sup>1/</sup>

In Madden v Madden, 43 Haw. 148 (1959) our supreme court held that it is the substance of a pleading and not its nomenclature

that determines its nature. Although Appellant here denominated his motion as being under Rule 60, HRCP, it could be argued that it is really a motion to alter or amend judgment under Rule 59(e). However, this interpretation, even if arguably correct, does not resolve the Appellant's problem. Appellant's motion for reconsideration was also not timely filed. The order of April 24, 1981, determined with finality the claims of the parties and contained the magic words granting judgment. See M.F. Williams, Inc v. C&C of Honolulu, 3 Haw.App. 319, 650 P.2d 599 (1982). The thirty-day period for filing a notice of appeal/ Section 603-11, HRS, provides:

602-11 Rules. The supreme court shall have power to promulgate rules in all civil and criminal cases for all courts relating to process, practices, procedure and appeals, which shall have the force and effect of law. Such rules shall not abridge, enlarge or modify the substantive rights of any litigant, nor the jurisdiction of any of the courts, nor affect any statute of limitations.

Whenever in a statute it is provided that the statute is applicable "except as otherwise provided," or words to that effect, these words shall be deemed to refer to provisions of the rules of court as well as other statutory provisions.

peal began to run on that date. Rule 73(a) provides that the thirty-day period is terminated by the timely filing of a motion under Rule 59(e). However, a motion under Rule 59(e) is required to be served not later than ten days after entry of the judgment. Rule 59(e), HRCP (1972, as amended). The record indicates that the motion in the instant case was served on May 11, 1981, seventeen days after judgment. Therefore the appeal period was not terminated and Plaintiff's notice of appeal came far too late. Cf. Naki v. Hawaiian Electric Co., Ltd, 50 Haw. 85, 431 P.2d 943 (1967).

Failure to file a timely notice is a fundamental jurisdictional defect which can neither be waived by the parties nor disregarded by the court in the exercise of judicial discretion. Independence Mtge. Trust v. Glenn Construction Corp., 57 Haw 554, 560 P.2d 488 (1977); Naki v. Hawaiian Electric Co., Ltd., supra; Ho v. Yee, 42 Haw. 228 (1957); Price v. Christman, 2 Haw.App.212, 629 P.2d

The provisions of Rule 73(a) are almost crystalline. The appeal period is absolute unless extended by actions taken by the appellant pursuant to those provisions. Plaintiff is no stranger to the appellate process. In addition to the prior appeal in this matter he was the successful pro se appellee in a related case decided by our supreme court in a memorandum decision.

A party may appear before any court in this state to prosecute or defend his own cause, without the aid of legal counsel, HRS 605-2 (1976), notwithstanding his lack of familiarity with the rules of the law and the practice of the courts. Oahu Plumbing and Sheet Metal, Ltd. v. Kona Construction Inc., 60 Haw. 372, 590 P.2d 570 (1979). However, once he has chosen to represent himself, he must be held to the same standard as if he were represented by counsel. Johnson v. Aetna Casualty and Surety Co. of Hartford Connecticut, \_\_\_ Wyo. \_\_\_, 630 P.2d 514, reh'q

denied, 454 U.S. 1118, 102 S.Ct 961, 71 L.Ed. 2d 105 (1981); Bly v. Henry, 28 Wash.App. 469, 624 P.2d 717 (1981); Homecraft Corp. v. Fimbres, 119 Ariz. 299, 580 P.2d 760 (Ariz App 1978); Bloch v. Bentfield, 1 Ariz App 412, 403 P.2d 559(1965). If he assumes the duties and responsibilities of an attorney, he is then held to the same standards of ethics and knowledge of legal principles and procedures of an attorney, Batten v. Abrams, 28 Wash.App 737, 626 P.2d 984 (1981), and he must be prepared to accept the consequences of his mistakes and errors. Heikes v. Fort Collins production Credit Association, 169 Colo. 27, 456 P.2d 274 (1969). Although a party may not be placed at a disadvantage by his pro se appearance, other than those attributed to his decision to proceed without counsel, he may not gain an advantage by virtue of his own representation. Johnson v. Aetna Casualty and Surety Co. of Hartford Connecticut, *supra*; Richardson v. White, 497 P.2d 348 (Colo App. 1972); Bloch v. Bentfield, *supra*.

Section 602-11, HRS, does not assist Plaintiff, because he has no right to appeal except where granted by constitution or statute. State v. Shintaku, 64 Haw. 307, 640 P.2d 289 (1982); Chambers v. Leavey 60 Haw. 52, 587 P.2d 807 (1978).

Dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawaii, December 15,  
1982

Robert L. Giuliani  
plaintiff-appellant  
pro-se

Roy F. Hughes (James F.  
Ventura with him on the  
brief; Libkuman, Ventura,  
Moon and Ayabe of counsel)  
for defendant-appellee.

/s/ James S. Burns

/s/ Walter M. Heen

/s/ Harry T. Tanaka

NO. 8390

IN THE SUPREME COURT OF THE STATE OF HAWAII  
OCTOBER TERM 1982

ROBERT L. GIULIANI and )	CIVIL NO. 46750
INGE E. GIULIANI, )	
	) APPLICATION FOR
Petitioners-Appellants)	WRIT OF CERTIORARI
	)
vs. )	INTERMEDIATE COURT
	) OF APPEALS
WALTER G. CHUCK, )	
	) HONORABLE JAMES S.
Respondent-Appellee. )	BURNS, WALTER N.
	HEEN and HARRY T.
	TANAKA,
	JUDGES

ORDER

The Application for Writ of Certiorary  
is hereby denied.

DATED: Honolulu, Hawaii, January 14, 1983.

FOR THE COURT:

/S/ H LUM  
Acting Chief Justice

Robert L. Giuliani  
Pro Se  
for the Writ.

SUPREME COURT  
Seal  
STATE OF HAWAII

FILED

1983 JAN 14 PM 3:17

/S/ Darrel N. Phillips  
CLERK SUPREME COURT

APPENDIX J

## HAWAII STATE CONSTITUTION

Art. I:

### RIGHTS OF CITIZENS

Section 8. No citizen shall be disfranchised, or deprived of any of the rights or privileges secured to other citizens, unless by the law of the land.

### TRIAL BY JURY, CIVIL CASES

Section 13. In suits at common law where the value in controversy shall exceed one thousand dollars, the right of trial by jury shall be preserved. The legislature may provide for a verdict by not less than three-fourths of the members of the jury.

### LIMITATIONS OF SPECIAL PRIVILEGES

Section 21. The power of the State to act in the general welfare shall never be impaired by the making of any irrevocable grant of special privileges or immunities.

### CONSTRUCTION

Section 22. The enumeration of rights and privileges shall not be construed to impair or deny others retained by the people.

APPENDIX K

ART VI:

RULES

Section 7. The supreme court shall have power to promulgate rules and regulations in all civil and criminal cases for all courts relating to process, practice, procedure and appeals, which shall have the force and effect of law.

## HAWAII RULES OF CIVIL PROCEDURE

Rule 16. PRE-TRIAL PROCEDURE; FORMULATING ISSUES. In any action, the court may in its discretion direct the attorneys for the parties to appear before it for a conference to consider

- (1) The simplification of the issues;
- (2) The necessity or desirability of amendments to the pleadings;
- (3) The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;
- (4) The limitation of the number of expert witnesses;
- (5) The advisability of a preliminary reference of issues to a master for findings to be used as evidence when the trial is to be by jury;
- (6) Such other matters as may aid in the disposition of the action.

The court shall make an order which recites the action taken at the conference, the

amendments allowed to the pleadings, and the agreements made by the parties as to any of the matters considered, and which limits the issues for trial to those not disposed of by admissions or agreements of counsel; and such order when entered controls the subsequent course of the action, unless modified at the trial to prevent manifest injustice. The court in its discretion may establish by rule a pre-trial calendar on which actions may be placed for consideration as above provided and may either confine the calendar to jury actions or to non-jury actions or extend it to all actions.

#### Rule 56. SUMMARY JUDGMENT

(c) Motion and proceedings thereon. The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to amount of damages.

Rule 60. RELIEF FROM JUDGMENT OR ORDER.

(a) Clerical Mistakes. (not applicable)

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, Etc.

On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released or discharged, or a prior judgment upon which it is based has been reversed or otherwise va-

cated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to set aside a judgment for fraud upon the court. Writs of coramvobis, audita querela, and bills of review are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

Rule 61. HARMLESS ERROR. No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by the court or

by any of the parties is ground for granting a new trial or for setting aside a verdict or for vacating, modifying, or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties. (Emphasis added).

HAWAII REVISED STATUTES

PART I. SUPREME COURT

Sec 602-1 How constituted. The supreme court, pursuant to section 2 of article (VI) of the Constitution, shall consist of a chief justice and four associate justices.

Sec 602-5 Jurisdiction and powers. The supreme court shall have jurisdiction and power as follows:

- (1) To hear and determine all questions of law, or of mixed law and fact, which are properly brought before it on any appeal allowed by law from any other court or agency;
- (2) To answer in its discretion, any question or proposition of law certified to it by a federal appellate court if the supreme court shall so provide by rule;
- (3) To entertain, in its discretion, any case submitted without suit when there is a question in difference which might be a subject of a civil action or proceeding in the supreme court, circuit court, or tax appeal court, and the parties agree upon a case containing facts upon

which the controversy depends;

(4) To exercise original jurisdiction in all questions arising under writs directed to courts of inferior jurisdiction and returnable before the supreme court, or if the supreme court consents to receive the case arising under writs of mandamus directed to public officers to compel them to fulfill the duties of their offices; and such other original jurisdiction as may be expressly conferred by law;

(5) To issue writs of habeas corpus, or orders to show cause as provided by chapter 660, returnable before the supreme court or a circuit court, and any justice may issue writs of habeas corpus or such orders to show cause, returnable as above stated;

(6) To make or issue any order or writ necessary or appropriate in aid of its appellate or original jurisdiction, and in such case, any justice may issue a writ or an order to show cause returnable before the supreme court;

(7) To make and award such judgments, decrees, orders and mandates, issue such executions and

other processes , and do such other acts and take such other steps as may be necessary to carry into full effect the powers which are or shall be given to it by law or for the promotion of justice in matters pending before it.

(8) All cases addressed to the jurisdiction of the supreme court or of the intermediate appellate court shall be filed with the supreme court as shall be provided by rule of court. The chief justice or his designee from any of the associate justices or the intermediate appellate judges, shall receive each case and shall assign the case either to the intermediate appellate court or to the supreme court within twenty days of the filing deadline for the last document permissible to be filed in the case pursuant to court rule.

(9) The supreme court may order the immediate reassignment of a case to itself after assignment to the intermediate appellate court whenever the supreme court in its discretion deems that the case concerns an issue of imperative or of fundamental public importance.

Sec 602-11 Rules. The supreme court shall have power to promulgate rules in all civil and criminal cases for all courts relating to process, practices, procedure and appeals, which shall have the force and effect of law. Such rules shall not abridge, enlarge, or modify the substantive rights of any litigant, nor affect any statute of limitations.

Whenever in a statute it is provided that the statute is applicable "except as otherwise provided," or words to that effect, these words shall be deemed to refer to provisions of the rules of court as well as other statutory provisions.

#### PART II. INTERMEDIATE APPELLATE COURT

(602-51) How constituted. The intermediate appellate court shall consist of a chief judge and two associate judges. The chief judge, who shall be specifically selected, shall supervise the administrative duties of the court.

(602-57) Jurisdiction. The intermediate appellate court shall have concurrent jurisdiction with the supreme court on all matters set

out in section 602-5(1) through (7), subject to assignment of cases set out in section 602-5(8).

(602-59) Appeals from decision of the intermediate appellate court, certiorari. (a) After issuance of a decision by the intermediate appellate court, a party may appeal such a decision only by application to the supreme court for a writ of certiorari, the acceptance or rejection of which shall be discretionary upon the supreme court.

(b) The application for writ of certiorari shall tersely state its grounds which must include (1) grave errors of law or of fact, or (2) obvious inconsistencies in the decision of the intermediate appellate court with that of the supreme court, federal decisions, or its own decision, and the magnitude of such errors or inconsistencies dictating the need for such appeal.

(c) An application for writ of certiorari may be filed with the supreme court no later than ten days after the filing of the decision of

the intermediate appellate court; the supreme court shall determine to accept the application within ten days of its filing. The failure of the supreme court to accept within ten days shall constitute a rejection of the application.

(d) Upon the acceptance of the application, the clerk of the intermediate appellate court shall forward the complete file of the case to the clerk of the supreme court. Supplemental briefs shall be accepted from the parties only upon the request of the supreme court.

#### CHAPTER 603 CIRCUIT COURTS

Section 603-2 Title. There shall be established in each of the judicial circuits of the state a court with the powers and under the conditions hereinafter set forth, which shall be styled the circuit court of such circuit, as, for instance, the circuit court of the third circuit.

Section 603-21.5 General. The several circuit courts shall have jurisdiction, except as otherwise expressly provided by statute, of:

(1) Criminal offenses cognizable under the laws of the state, committed within their respective circuits or transferred to them for trial by change of venue from some other circuit court;

(2) Actions for penalties and forfeitures incurred under the laws of the state;

(3) Civil actions and proceedings, in addition to those listed in sections 603-21.6, 603-21.7, and 603-21.8.

**Section 603-21.9 Powers.** The several courts shall have power:

(1) To make and issue all orders and writs necessary or appropriate in aid of their original or appellate jurisdiction;

(2) To administer oaths;

(3) To compel the attendance of parties and witnesses from any part of the State, and compel the production of books, papers, documents or tangible things;

(4) To admit to bail persons rightfully confined in all bailable cases, or to dispense with bail as provided by the State Constitution;

(5) To issue warrants for the apprehension, in any part of the State, of any person accused under oath of a crime or misdemeanor committed in any part of the State and to examine and commit the person to prison according to law, for trial before the circuit court of the circuit in which the offense was committed, to fix bail and generally to perform the duties of a committing magistrate;

(6) To make and award such judgments, decrees orders, and mandates, issue such executions and other processes, and do such other acts and take such other steps as may be necessary to carry into full effect the powers which are or shall be given them by law or for the promotion of justice in matters pending before them.

#### PLEADINGS AND PROCEDURE

Section 635-12 No jury, when. (a) When there is no right of trial by jury, or the right has been waived, the issues shall be determined by the judge without the intervention of a jury.

(b) Whenever provision is made by statute for trial without the intervention of a jury, the

same shall not be deemed to preclude trial of  
an issue with an advisory jury, or trial by  
jury, or trial by jury by consent of the parties.

(c) Whenever provision is made by statute for waiver of a jury, the same shall not be deemed to preclude trial by jury when, in accordance with the rules of court, (1) an order of the court relieves a party from his waiver, or (2) approval of or consent to the waiver is required in a criminal case and has not been given. (Emphasis added)

Section 635-13 Jury, when of right. When the right of trial by jury is given by the Constitution or a statute of the United States or this State and the right has not been waived, the case shall be tried by a jury.

IN THE SUPREME COURT OF THE  
UNITED STATES

October Term 1983

ROBERT L. GIULIANI,

**Appellant,**

v.

STATE OF HAWAII, et.al.,

### Appellees.

**PETITION FOR WRIT OF CERTIORARI**

**AFFIDAVIT OF SERVICE OF  
ROBERT L. GIULIANI**

STATE OF HAWAII )  
CITY AND COUNTY OF HONOLULU ) : SS.

ROBERT L. GIULIANI, being first duly  
sworn, on oath, deposes and says:

That He did personally serve 3 copies of the foregoing petition for writ of certiorari on 8 June 1984 to the following counsel of record for the above named appellees at the following address by hand delivering the same to an employee therein:

Office of the Attorney General

State of Hawaii  
State Capitol  
415 S. Beretania St.  
Honolulu, Hawaii 96813

That all parties required to be served  
have been served through the above named  
counsel.

FURTHER, Affiant sayeth naught.

DATED: Honolulu, Hawaii 8 June 1984.

Robert L. Giuliani  
ROBERT L. GIULIANI

Subscribed and sworn to before me  
this 8<sup>th</sup> day of June 1984.

Robert L. Giuliani  
Notary Public, State of Hawaii  
My commission expires: 11-1-85